ment that a juror shall be a taxpayer (Laws of Wash., 1909, p. 131) conflicts with both the Federal Constitution, which guarantees a speedy and public trial by an impartial jury, and the State Constitution, which provides that "the right of trial by jury shall remain inviolate." *Held*, the jury clause of the Fed. Const. does not apply to prosecutions in state courts for violations of state laws; that the state law does not violate the State Const. *State* v. *McDowell* (1911), — Wash. —, 112 Pac. 521.

It is absolutely settled that the U. S. Const. as to jury trial does not apply to criminal prosecutions for violation of a state law. 8 CYC. 1091; *Pearson* v. *Yewdall*, 95 U. S. 294; *Twitchell* v. *Com.*, 7 Wall. 321; *Maxwell* v. *Dow*, 176 U. S. 581. It is also as well settled that it does operate in territories, and that a jury means twelve persons. *Rassmussen* v. *U. S.*, 197 U. S. 516; *Thompson* v. *Utah*, 170 U. S. 343. And that a territorial law that a juror shall be a taxpayer violates the U. S. Const. *Reece* v. *Knott*, 3 Utah 451. Then the question naturally arises, when a state const. says the jury trial shall remain inviolate, How far may a state by general law invade this right by way of imposing qualifications upon jurors? Constitutional guaranties in the various states, that "the right of trial by jury shall remain inviolate," refer to the right as it existed at the adoption of the constitution. PROFFATT, JURY TRIAL, § 84; *State* v. *McClear*, 11 Nev. 39; *Copp* v. *Henniker*, 55 N. H. 179; *Norval* v. *Rice*, 2 Wis. 22. However, it was not the intention of the framers of the constitution to impose restrictions on the legislature as to the manner in which a jury should be selected and obtained. *People* v. *Harding*, 53 Mich. 49; *Stokes* v. *State*, 53 N. Y. 164. The three essential attributes of a jury are numbers, impartiality, and uniformity. *Lommen* v. *Minn. etc. Co.*, 65 Minn. 196. There must be twelve persons, good men and true. *State* v. *McClear*, supra; *Vaughn* v. *Scade*, 30 Mo. 600; *Work* v. *State*, 2 Ohio St. 297. Jury must be impartial, hence to take away the right to challenge for actual bias is unconstitutional. *State* v. *McClear*, supra. But the legislature may prescribe the qualifications of jurors and the mode of their selection. *State* v. *Slover*, 134 Mo. 607. A struck jury is legal. *Fowler* v. *State*, 58 N. J. Law 423; *Lommen* v. *Minn. etc. Co.*, supra. Even though it does not appear that the legislature having the power might put property qualifications so high as to virtually subvert the right of trial by jury, still it has the right to pass laws that are reasonable, the reasonableness being open as a judicial question.

LANDLORD AND TENANT—FORFEITURE OF LEASE—WASTE.—The lessee of a frame building agreed to sublet the same to defendant for the purpose of operating a moving picture theater therein. Defendant made several repairs in the building: tore out window frames and sash in front of the building, removed plastering, cut and removed partitions, put in a new floor, built a new front, and removed a stairway. An action to enjoin the commission of waste was instituted by the owner of the building. Defendant claimed that the building was out of repair and in a dangerous condition; that the front, sills, partitions and studding were rotten; that it was a dangerous place to work in: that defendant showed plaintiff the plans for the proposed

changes, and plaintiff assented, saying—"That will be all right; let us go in and have a drink." *Held,* the act of defendant in making the alterations was not waste. The building as changed and altered is much more substantial and valuable than it was before, and is not so changed and altered that it cannot be restored. Plaintiff, having consented, is estopped to complain of the changes. *Abel* v. *Wueston* (1911), — Ky. —, 133 S. W. 774.

Under the earlier English decisions, the mere moving of a door or window, or the taking away of wainscoting, was an act of waste. *Agate* v. *Lowenbein,* 57 N. Y. 604. In that case it was held to be incompatible with the landlord's interest for a tenant to make alterations, unless he was justified by express permission. The doctrine of the earlier cases has been greatly modified to meet the changed conditions of the present time. In TAYLOR, LANDLORD AND TENANT, Ed. 8, art. 348, it is said: "But this strictness of the common law, has been essentially modified in this country, and it is now understood, it is not waste to erect a new edifice upon the demised premises or make an alteration therein, if it can be done without destroying or materially injuring the building or other improvements already placed thereon. He has no right indeed to pull down valuable buildings or to make improvements or alterations which will materially and permanently change the nature of the property so as to make it impossible for him to restore the premises at the expiration of the term, substantially as he received them; but to apply the ancient doctrine of waste in modern tenancies, even for short terms, would be an entire stop to the progress of improvement, and deprive the tenant of those benefits which both parties contemplated at the time of the demise, without any possible advantage to the owner of the reversion." A mere act of repair or alteration, such as the cutting a door in a house, if it did no actual injury, and did not tend to destroy the evidence of the reversioner's title, would not be waste. *Jackson* v. *Tibbits,* 3 Wend. 341; 1 WASHBURN, REAL PROPERTY, Ed. 5, 153. The real test seems to be whether the act essentially injures the inheritance as it will come down to the reversioner. This is a question for the jury. *Jackson* v. *Andrew,* 18 Johns. 431; *Webster* v. *Webster,* 33 N. H. 25. So a tenant for years may tear down a dilapidated building and erect another of the same size on the same foundation, and at the end of the term move it off. *Beers* v. *St. John,* 16 Conn. 322. Likewise a life tenant may erect a new smokehouse in place of one gone to decay, from materials obtained on the homestead. *Sarles* v. *Sarles,* 3 Sandf., Ch. 601.

MASTER AND SERVANT—INVOLUNTARY EMPLOYMENT—CONVICT LABOR.—Action by a convict against a company which had leased his services from the state, to recover for injuries sustained because of the negligence of a guard also employed by defendant company. *Held,* that the plaintiff was not a fellow servant of any of his employer's servants, so as to prevent recovery, as he was under no express or implied obligation to assume the risk of the negligence of another servant of the lessee. *Sloss-Sheffield Steel & Iron Co.* v. *Long* (1910), — Ala. —, 53 South. 910.

This case involves the position occupied, in the field of torts, by a con-